



## MEMORANDUM

TO: Will Johnson, Chief of Police

FROM: Trey Yelverton, <sup>cy</sup>City Manager

DATE: July 25, 2019

SUBJECT: AMPA Personnel Policy Complaint

I have completed my review of the March 20, 2019, Arlington Municipal Patrolman Association's complaint alleging a policy violation by you at a Police Department Manager's Meeting on November 8, 2018.

Specifically, AMPA alleges that you violated City of Arlington Personnel Policy 201.11.A (1)(2) – Unbecoming Conduct and Conduct Prejudicial to Good Order wherein you used the “N” word during an APD Managers Meeting.

The City conducted a thorough review. My conclusions did not rest solely on your statements, but also upon other information gathered about the meeting, the context in which the word was used, personnel policies, as well as past arbitration precedents.

To review this matter, I completed the following:

1. Reviewed the AMPA correspondence dated March 20, 2019
2. Reviewed the AMPA membership email dated March 23, 2019
3. Reviewed the relevant sections of the City's current and prior Personnel Policies
4. Reviewed a summary complaint assessment from Deputy City Manager Gilbert Perales
5. Discussed the matter with Assistant City Attorney Pamela Hutson-Johnson and City Attorney Teris Solis
6. Reviewed prior arbitration decisions on this policy subject
7. Discussed the matter, expectations and my policy interpretations with yourself

After thoughtfully considering all the information collected and reviewed, I find that:

- You stated the “N” word within the APD Manager's meeting on November 8, 2018. The context of the discussion was to specifically urge staff vigilance regarding hate crime investigations and reporting.

- Your recitation of the term was a fact within a prior criminal case, not the reflection of your personal view. Specifically, you recounted the facts of a memorable criminal case that left an indelible impression on you as a young officer and used that experience as coaching guidance with your staff.
- After receiving feedback that some in the meeting took issue with your approach to addressing the topic, you held a follow up meeting and discussed this matter again one week later. At that meeting, you apologized for offending anyone with articulation of the word. Further, you made it clear to those present that you will not shrink down from this topic or walk away. Rather, you will continue to lean in and lead on protecting civil rights for all people.
- During this same time period, you contacted key community leaders to inform them of the facts, details, and context of your discussion at the Manager's meeting.
- Multiple prior arbitration precedents do not support discipline in this instance. Specifically, in the 2008 Stevens vs. City of Arlington arbitration, all discipline was overturned by the arbitrator because he found "a simple recitation of a situation is not discriminatory." Further, the arbitrator noted "...there may be situations when the same words could be uttered, clearly without discriminatory attitude or prejudice. A good example would be when someone recounts an incident verbatim without any other intent other than explaining what happened." In a separate case, 2009 Gibson vs. City of Arlington, the arbitrator entirely overturned discipline because of the "lack of discriminatory intent."
- In 2009, the City updated the Personnel Policy 201.11 to protect community concerns. It added, "The subjective intent of the speaker or actor is not relevant in the determination of whether this standard of conduct is violated." It is not a reasonable interpretation of this policy to determine a violation based upon the recitation of a case fact. For example, exceptions could include documenting evidence or providing court testimony about or in a specific case. However, exceptions would not include situations where the employee was exercising their independent thought and use of words which could reasonably be construed as individual beliefs or expressions.
- The comparison of this situation is in stark contrast to the case referenced in the AMPA correspondence. Fact statements of a past criminal case in the context of hate crime investigation and reporting is not an equivalent situation to an officer stating a personal view that "....There's also not a lot of black or Hispanic females that are worth a shit around here....." The latter is exactly what the City's policy was written to address.
- Given the concern by some employees regarding the current policy, as demonstrated by this complaint, the policy will be reviewed.

In summary, I conclude that you did not violate the City's Personnel Policy of Conduct Unbecoming and Conduct Prejudicial to Good Order. Your long-time efforts have been to advocate and be a leader to safeguard and protect civil rights for all persons. Your conduct in these matters reflect favorably for yourself and the City. You have a unique organizational perspective that led to a furtherance of your efforts to have a purposeful

discussion with your senior team about the importance and community impact of hate crimes and subsequent investigation and reporting of such crimes.

As we have discussed, you could have used a different tactic to achieve a similar result of creating a sense of urgency among your key staff regarding hate crime investigations and reporting. The approach you used created an unnecessary distraction to a purposeful discussion as well as created risks to yourself and the City. As you have said, "words matter." They do. While I believe your approach to the discussion should have been different, all of your actions as Police Chief matter too. Your leadership on civil rights and procedural justice issues in our community has been clear. While I expect you to use better discretion in the manner you address this topic with our staff and community, I encourage your ongoing efforts on this important topic as continued vigilance is required.

Cc: Gilbert Perales, Deputy City Manager  
Yoko Matsumoto, Human Resources Director  
Pamela Hutson-Johnson, Assistant City Attorney  
Chris Ceballos, Arlington Municipal Patrolman's Association